



DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration (Demo) Project Program

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice of amendment; STRL Personnel Demonstration Project reduction-in-force (RIF) procedures.

SUMMARY: This notice amends STRL Personnel Demonstration Project reduction-in-force (RIF) procedures. STRL RIF procedures will ensure employees involuntarily separated through a RIF are separated primarily based on performance, as determined under any applicable performance-management system.

DATES: Implementation of this Federal Register notice will be [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

1. Background

As authorized by 10 U.S.C. 4121, the Secretary of Defense (SECDEF), through the USD(R&E), may conduct personnel demonstration projects at DoD laboratories designated as STRLs. An STRL implementing these flexibilities must have an approved personnel demonstration project plan published in a FRN and must fulfill any collective bargaining obligations. Procedures described herein supersede and cancel the RIF procedures described in previously published STRL FRNs (Appendix B) and establish performance, also referred to as “contribution,” as the primary basis for determining which employees will be separated from employment when implementing a RIF. STRL internal operating procedures (IOPs) will describe the use of discretionary flexibilities when conducting a RIF.

The 21 current STRLS are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- Combat Capabilities Development Command Army Research Laboratory
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Development Command
- Technical Center, U.S. Army Space and Missile Defense Command
- Naval Air Warfare Center
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

2. Summary of Comments

On July 28, 2021, the Department of Defense published a notice in the Federal Register, “Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project Program,” (86 FR 40500-40509), for comment from members of the public. The comment period ended on August 27, 2021, with one comment received.

Comment: The proposed provision of putting an employee with an unacceptable rating ahead of a non-rated employee for purpose of RIF retention standing should be re-examined. For the purpose of RIF, I suggest considering the grant of an assumed fully successful rating of record for non-rated employees and laboratory discretion (to be documented in internal operating procedures) to determine the score for non-rated employees.

Response: In response to this comment, the notice has been revised to permit, but not require, adoption of internal operating procedures which assign an assumed rating and associated demo score to recently hired employees who are ineligible for a rating of record, for purposes of RIF procedures.

3. Overview

I. Introduction

A. Purpose

This notice implements RIF procedures for the STRL employees in the competitive or excepted services and ensures they are separated from employment primarily on the basis of performance, as determined under any applicable performance management system. This is an overarching FRN applicable to all STRLs.

B. Required Waivers to Law and Regulations

Waivers and adaptations of certain Title 5 U.S.C., and Title 5, Code of Federal Regulations (CFR), provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration projects.

Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan

is intended to preclude the STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Participating Organizations and Employees

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121, with approved personnel demonstration project plans published in FRNs, must use the provisions described in this FRN.

II. Personnel System Changes

A. Authority

For any RIF of civilian employees in the competitive and excepted services in DoD, the determination as to which employees will be separated from employment will be primarily based on performance, also referred to as “contribution.”

The STRLs will consider every reasonably available option to mitigate the impact of a proposed RIF, including but not limited to job changes or retraining, the use of voluntary early retirement authority or voluntary separation incentive payments, hiring freezes, termination of temporary employees, termination of employees in tenure group 0, reduction in work hours, curtailment of discretionary spending, and other pre-RIF placement activities for employees eligible for placement assistance and referral programs. Use of any such options shall be consistent with applicable policies and procedures.

B. Definitions

Assumed rating – A designated rating for purposes of determining retention standing that is the equivalent of a fully successful rating under the STRL performance management system. It is not a rating of record and only may be used for purposes of determining retention standing of employees who are ineligible for a rating as documented in the STRL IOP.

Career path – A grouping of occupations with similar characteristics composed of pay bands designed to facilitate career progression. May also be referred to as career track, occupational family, or pay plan.

Displace/Displacement – The assignment of an employee to a continuing position that is held by another employee with a lower retention standing (i.e., “bumping” another employee). Displacement may be at the same band or the next lower band below the employee’s existing band as documented in STRL IOPs. A preference-eligible employee with a compensable service-connected disability of 30 percent or more (veteran preference category AD) may displace to positions two bands (or equivalent to five grades) below his/her current band. A released employee may have displacement rights to a position without regard to whether the employee previously held the position of the employee with lower retention standing.

Flexible and renewable term technical appointment – An appointment that affords eligibility for employee programs and benefits comparable to those provided to similar employees with permanent appointments, to include opportunities for professional development and eligibility for award programs, as described in Section 1109 of the National Defense Authorization Act for Fiscal Year 2016, as amended, and in 82 FR 43339, as amended. Appointments may be made in six-year increments and extended without limit in up to six-year increments.

Fully qualified – Employee meets the Office of Personnel Management qualification standards, or standard-level descriptors as described in STRL IOPs, and has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption, e.g., within 90 days. Determination as to whether an impacted employee is fully qualified for RIF placement will be made by an STRL subject matter expert.

Modified term appointment – An appointment used to fill a position for a period of more than one year but not more than five years when the need for an employee’s services is not permanent. The modified term appointment differs from the term appointment described in 5

CFR part 316 in that it may be made for up to five years, compared to four years for the term appointment, and it may be extended for an additional year for a total of six years. An employee hired under this appointment authority may be eligible for conversion to a career or career-conditional appointment. It may also be referred to as a contingent term appointment.

Non-rated (NR) rating – A designated rating for purposes of determining retention standing which is less than the lowest rating under the STRL performance management system. It is not a rating of record and only may be used for purposes of determining retention standing of employees who are ineligible for a rating of record and have not been assigned an assumed rating.

Performance – For the purposes of a RIF in the STRLs, performance is determined by each STRL performance-management system, including contribution-based or performance-based systems, as recorded in the rating of record.

Period of performance – STRL performance-management plans may specify a minimum number of months to receive a performance assessment. Such periods will be at least 90 days and generally allow all employees to receive at least one performance assessment prior to implementation of a RIF.

Retreat – The assignment of an employee released from their competitive level to a position held by another employee lower in retention standing if the position is the same position or an essentially identical position formerly held by the released employee. This assignment may be to an essentially identical position in the released employee's current band or to the next lower band, regardless of career path as documented in STRL IOPs.

Unacceptable rating – Documented ratings of record of unacceptable, unsuccessful, failure, or unsatisfactory are used synonymously and reflect summary level 1 as described in 5 CFR 430.208.

C. Provisions

(1) Identification of Positions Being Abolished. Positions may be identified to be abolished based on budget, research area, project funding, lack of work, reorganization, or other elements identified by the STRL.

(2) Scope of Competition. STRLs will determine the retention standing of each employee competing in the RIF based on any factors outlined in this FRN, as long as performance, as documented in the rating of record, is the primary consideration.

a. Competitive Areas. The STRL may determine the competitive area by career path (pay plan), occupational group, line of business, product line, organizational unit, funding line, occupational series, functional area, competency area, technology directorate, or geographical location, or a combination of these elements, and must include all demonstration project employees within the defined competitive area. The competitive area must be defined at least 90 days prior to the effective date of the RIF and descriptions of all competitive areas must be made readily available for review.

b. Competitive Levels. Competitive levels may or may not be used, as documented in STRL IOPs. If competitive levels are used, they are assigned at the time the position description is classified and may be based on demonstration project criteria, such as specialty areas or functional codes, so long as these criteria serve to define those positions that are similar enough in duties and qualification requirements such that an incumbent of one position may be reassigned to another in the competitive level without causing an undue interruption in work. When competitive levels are used and established, employees will be released as described in II.C.(7)a.2 and II.C.(7)b. If competitive levels are not used, employees will be released as described in II.C.(7)d.1.

(3) Retention Standing. Competitive-service employees and excepted-service employees are placed on separate retention registers, with performance as the first factor as documented in ratings of record and designated ratings. Sample retention registers are in Appendix C.

(4) Periods of Assessed Performance. Because the primary consideration is performance, STRL employees with no performance assessment (annotated as “NR”) may not be placed above those with an assessed rating of less than fully successful/acceptable. STRLs may, but are not required to, group employees based on periods of assessed performance (e.g., those with a period of assessed performance of at least 90 days, those with a period of assessed performance of at least 180 days, etc.), as documented in STRL IOPs.

(5) Retention Factors. Competing employees will first be listed on a retention register based on the rating of record (as documented in the personnel data system) or the designated rating. If meaningful distinctions do not exist in the rating of record, each STRL may, as secondary criteria, differentiate based on average score or other performance-related factor. Each STRL may further differentiate based on any of the following retention factors: tenure group; average score or other performance-related factor as determined by the STRL (where not previously utilized); veterans’ preference; DoD service computation date-RIF (DoD SCD-RIF); SCD-RIF adjusted by additional service credit for performance; or period of performance.

a. Rating of Record. Rating of record is documented by each STRL in accordance with its designated performance or contribution management cycle. Additionally, STRL procedures may provide that a single rating of record or multiple ratings of record will be used and averaged, as described in its IOPs. When multiple ratings of record are used, they will be drawn from the ratings within the four-year period preceding the “cutoff date” established for the RIF. However, when the most recent rating of record is “unacceptable,” only that rating of record will be considered for purposes of a RIF. STRL procedures will provide a method for converting an employee’s rating pattern from another system when it does not align with the STRL performance-management system, as documented in STRL IOPs.

1. Presumptive Ratings. A presumptive rating will be used as the current rating of record for purposes of a RIF when an employee did not receive a performance appraisal due to an absence resulting from: uniformed military service; performance of duties under the

expeditionary civilian deployment program; extended leave or sabbatical; a work-related injury approved for compensation pursuant to an Office of Workers' Compensation Program; or other similar absence. The presumptive rating of record will be the employee's last performance appraisal of record prior to the period of absence or as specified in STRL IOPs.

2. Modal Ratings. A modal rating will be used as the rating of record only for those employees who do not have any previous performance within the four-year period preceding the cutoff date established for the RIF and have an absence resulting from: uniformed military service; performance of duties under the expeditionary civilian deployment program; extended leave or sabbatical; a work-related injury approved for compensation pursuant to an Office of Workers' Compensation Program; or other similar absence. The modal rating is the rating of record most frequently used among the actual ratings of record given to employees within the same competitive area for the appropriate rating cycle or cycles.

b. Designated Rating.

1. Assumed rating. As documented in the STRL IOP, the STRL may authorize use of assumed ratings along with associated demo scores for purposes of determining retention standing.

2. Non-Rated (NR) rating. An NR rating will be used when an employee is ineligible for a rating of record and no assumed rating has been assigned.

c. Average Score or Other Performance-Related Factor as Determined by the STRL. STRLs may assign numeric values to other aspects of their performance-management systems that further differentiate levels of performance or contribution. For example, if an STRL utilizes a contribution-based system, the delta overall contribution score or assessment category score may be used; in a performance-based system, the assigned decimal score may be used, as documented in STRL IOPs. STRLs using Pass/Fail as the rating of record must use average score or other performance-related factor as the second retention factor.

d. Tenure Group.

1. Tenure groups are defined in 5 CFR 351.501(b) for competitive service and 5 CFR 351.502(b) for excepted service, or in an STRL's FRN. In addition, STRLs may consider tenure group 1 and 2 employees as tenure group 1 for RIF purposes and employees on modified term appointments as tenure group 0 or tenure group 3, as documented in STRL IOPs.

2. Employees on modified term or flexible-length and renewable term appointments who were previously selected through competitive procedures, and who otherwise meet conditions required for such conversion, may be converted to permanent appointments (tenure group 1 or tenure group 2, as appropriate), provided such conversions are effective not less than 90 days prior to the effective date of the RIF.

3. Employees on flexible-length and renewable term appointments who have completed three years of service may be treated as permanent employees (tenure group 1) and those with less than three years may be treated as tenure group 2, as documented in STRL IOPs.

4. Employees treated as tenure group 3 are ranked below any tenure group 1 or 2 employees, notwithstanding any other retention factor.

d. Veterans' Preference. Competing employees are placed in a veterans' preference category as described in 5 CFR 351.501(c).

e. DoD SCD-RIF. The SCD-RIF includes all creditable service authorized by 5 CFR 351.503(a) and (b). The STRLs may further differentiate an employee's retention standing by utilizing the retention service credit for performance as described in 5 CFR 351.504. If used, this is referred to as DoD SCD-RIF adjusted.

(6) Creation of the Retention Register. STRLs will determine and document the order of retention in a manner that ensures retention decisions are based primarily on performance, as documented in the rating of record. Other factors which may receive secondary consideration are tenure group, veterans' preference, SCD RIF, SCD RIF adjusted, and period of performance. Factors will be weighted in a manner that generally ensures that high-performing employees are not displaced.

(7) Order of Release.

a. Employees to be Released First.

1. STRLs can release Tenure 0 employees prior to RIF competition based on mission needs.

2. STRLs will release employees from the competitive level (if used) with a written decision of removal under 5 CFR parts 432 or 752 before releasing any employee competing in the RIF.

3. Employees demoted for unacceptable performance who have not received a rating on their current position will have ratings of record drawn from within the four-year period preceding the cutoff date established for the RIF (to include any rating of record of “unacceptable”), if the STRL uses multiple ratings in its retention factors.

b. If competitive levels are utilized by an STRL, employees will be released beginning with the employee with the lowest retention standing on the retention register for that competitive level. An STRL may provide for intervening displacement within the competitive level before final release of the employee with the lowest retention standing from the competitive level.

c. STRL employees have assignment rights under RIF procedures if the current performance appraisal reflects a rating of record of at least minimally successful/minimally acceptable.

d. STRLs may apply assignment rights described in 5 CFR 351.701 or other assignment rights as described below.

1. Single Round. When a specific position is to be abolished, the incumbent of that position may displace an employee within the band or at the next lower band, as documented in STRL IOPs, when the incumbent has a higher retention standing and is fully qualified for a position occupied by an employee with a lower retention standing among those competing in the RIF. A preference-eligible employee with a compensable service-connected disability of 30 percent or

more (veterans' preference category AD) may displace to positions two bands (or equivalent to five grades) below his/her current band. If there is no position in which an employee can be placed using this process or through assignment to a vacant position, that employee will be separated.

2. Two Round. When reducing positions in the same occupational series and pay band, competitive levels—consisting of such positions that are similar enough in duties, qualification requirements, and working conditions that the incumbent of one position can successfully perform the duties of any other position in the competitive level without unduly interrupting the work program—will be established. In round one, STRLs identify employees for release beginning with the employees with the lowest retention standing in the competitive level. In round two, within each competitive area, an employee identified for release in round one may displace an employee within the band or at the next lower band, as documented in STRL IOPs, when the released employee has a higher retention standing and is fully qualified for a position occupied by an employee with a lower standing among those competing in the RIF. A preference-eligible employee with a compensable service-connected disability of 30 percent or more (veterans' preference category AD) may displace to positions two bands (or equivalent to five grades) below the band of the position from which he/she is released. If there is no position in which an employee can be placed using this process or through assignment to a vacant position, that employee will be separated.

3. Retreat during RIF. STRLs may establish procedures permitting an employee identified for release to displace an employee within the band or at the next lower band when the released employee has a higher retention standing than the displaced employee and previously served in the displaced employee's position, or an essentially identical position, regardless of career path.

4. Offers of Vacant Position. When an STRL chooses to utilize vacancies for which released employees qualify, the STRL must consider the relative retention standing of all

released employees and must offer the position to the released employee with the highest retention standing.

e. Exceptions. STRLs must comply with protections afforded employees pursuant to 5 CFR 351.606, including protections under the Uniformed Services Employment and Reemployment Rights Act.

III. Required Waivers to Law and Regulations

The following waivers and adaptations of certain 5 U.S.C. and 5 CFR provisions are required only to the extent to which these statutory and regulatory provisions limit or are inconsistent with the actions contemplated under these STRL demonstration project RIF procedures. Nothing in this plan is intended to preclude the demonstration projects from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this notice.

Appendix A. Waivers to Law and Regulations

<u>Title 5, United States Code</u>	<u>Title 5, Code of Federal Regulations</u>
5 U.S.C. 3502 – Order of Retention is waived to allow STRLs to determine the appropriate order of retention as described in this FRN.	5 CFR part 351 subparts B, D, E, F, and G are waived to the extent necessary to allow the provisions of reduction in force as described in this FRN. 5 CFR 430.208 – Rating Performance is waived to the extent necessary to allow STRLs to assign an assumed rating as described in this FRN.

Appendix B. Authorized STRLs and Federal Register Notices

<u>STRL</u>	<u>Federal Register Notice</u>
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076
Joint Warfare Analysis Center	85 FR 29414
Army Futures Command	Not yet published

Army Research Institute for the Behavioral and Social Sciences	85 FR 76038
Combat Capabilities Development Command Armaments Center	76 FR 3744
Combat Capabilities Development Command Army Research Laboratory	63 FR 10680
Combat Capabilities Development Command Aviation and Missile Center	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together)
Combat Capabilities Development Command Chemical Biological Center	74 FR 68936
Combat Capabilities Development Command Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center	66 FR 54872
Combat Capabilities Development Command Ground Vehicle Systems Center	76 FR 12508
Combat Capabilities Development Command Soldier Center	74 FR 68448
Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135
Medical Research and Development Command	63 FR 10440
Technical Center, U.S. Army Space and Missile Defense Command	85 FR 3339
Naval Air Systems Command Warfare Centers	76 FR 8530
Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center	86 FR 14084
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924
Naval Medical Research Center	Not yet published
Naval Research Laboratory	64 FR 33970
Naval Sea Systems Command Warfare Centers	62 FR 64050
Office of Naval Research	75 FR 77380

Appendix C. Sample Retention Registers

Sample 1: Based on Rating of Record, Tenure, Average Score Calculation, Veterans' Preference, and DoD SCD-RIF Retention Factors, as Determined by the STRL

Name	Average Rating of Record	Tenure	Average Score Calculation	Veterans' Preference	DoD SCD-RIF
Maddie	5	I	4.8	AD	17-Dec-1979
Eleanor	5	I	4.8	A	3-Nov-1990
Ian	5	I	4.5	B	6-May-2013
Dylan	5	II	4.8	B	28-Feb-2015
Rich	5	II	4.3	A	10-Jul-2012
Thomas	5	II	4.3	A	18-Jun-2015
Susan	4	I	4.2	B	12-June-1995
Valerie	4	I	3.5	A	9-Jul-1995
Sherri	4	I	3.5	B	6-Aug-1996
Peter	4	II	4.3	B	5-Sep-2015
Paul	4	II	3.5	B	12-Dec-2015
Paula	3	I	4.2	B	25-Mar-1987
Jason	3	I	3.9	A	13-Aug-2013
Regina	3	I	3.8	A	19-Aug-1984
Garrett	3	I	3	B	5-Sep-2011
Vicki	3	II	3.7	B	27-Mar-2015
Brandon	3	II	3	A	3-Jan-2015
Justin	2	I	2	AD	10-Jan-2010
Joe	1	I	0	AD	11-Jan-2010
Sally	NR	I	NR	AD	11-Jan-2010

Joe has an unacceptable rating. Sally has no rating and is therefore at the bottom of the retention register.

Sample 2: Based on Average Rating of Record, Veterans' Preference, Tenure, DoD

SCD-RIF Retention Factors, as Determined by the STRL

(STRL Does Not Use an Average Score Calculation)

Name	Average Rating of Record	Veterans' Preference	Tenure	DoD SCD-RIF
Maddie	5	AD	I	17-Dec-1979
Eleanor	5	A	I	3-Nov-1990
Rich	5	A	II	10-Jul-2012
Thomas	5	A	II	18-Jun-2015
Ian	5	B	I	6-May-2013
Dylan	5	B	II	28-Feb-2015
Valerie	4	A	I	9-Jul-1995
Susan	4	B	I	12-June-1995
Sherri	4	B	I	6-Aug-1996
Peter	4	B	II	5-Sep-2015
Paul	4	B	II	12-Dec-2015
Jason	3	A	I	13-Aug-2013
Regina	3	A	I	19-Aug-1984
Brandon	3	A	II	3-Jan-2015
Paula	3	B	I	25-Mar-1987
Garrett	3	B	I	5-Sep-2011
Vicki	3	B	II	27-Mar-2015
Justin	2	AD	I	10-Jan-2010
Joe	1	AD	I	11-Jan-2010
Sally	NR	AD	I	11-Jan-2010

Joe has an unacceptable rating. Sally has no rating and is therefore at the bottom of the retention register.

**Sample 3: Based on Pass/Fail Rating of Record, Average Score, Veterans' Preference,
Tenure, and DoD SCD RIF Retention Factors, as Determined by the STRL**

Name	Rating of Record (Pass or Fail)	Average Score	Veterans' Preference	Tenure	DoD SCD-RIF
Maddie	P	4.8	AD	I	17-Dec-1979
Eleanor	P	4.8	A	I	3-Nov-1990
Rich	P	4.5	A	II	10-Jul-2012
Thomas	P	4.3	A	II	18-Jun-2015
Ian	P	4.3	B	I	6-May-2013
Dylan	P	4.2	B	II	28-Feb-2015
Valerie	P	4.2	A	I	9-Jul-1995
Susan	P	3.9	B	I	12-June-1995
Sherri	P	3.8	B	I	6-Aug-1996
Peter	P	3.7	B	II	5-Sep-2015
Paul	P	3.5	B	II	12-Dec-2015
Jason	P	3.3	A	I	13-Aug-2013
Regina	P	3	A	I	19-Aug-1984
Brandon	P	3	A	II	3-Jan-2015
Paula	P	2	B	I	25-Mar-1987
Garrett	P	2	B	I	5-Sep-2011
Vicki	P	2	B	II	27-Mar-2015
Justin	P	2	AD	I	10-Jan-2010
Joe	F	0	AD	I	11-Jan-2010
Sally	NR	NR	AD	I	11-Jan-2010

Ian was released from his competitive level in the first round of RIF. Ian does not qualify for any position encumbered by an employee with a lower retention standing than Paul, but formerly held the identical position currently occupied by Paul. Ian will retreat to the position held by Paul because Paul is lower in retention standing than Ian. RIF placement will then be sought for Paul.

Dated: September 21, 2022.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

